

111TH CONGRESS
1ST SESSION

H. R. 2490

To amend the Internal Revenue Code of 1986 to allow certain small businesses to defer payment of tax.

IN THE HOUSE OF REPRESENTATIVES

MAY 19, 2009

Mr. KENNEDY (for himself, Mr. KAGEN, and Mr. PATRICK J. MURPHY of Pennsylvania) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to allow certain small businesses to defer payment of tax.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Generating Reinvest-
5 ment Opportunities With America’s Small Businesses Act
6 of 2009” or the “GROW America’s Small Businesses Act
7 of 2009”.

1 **SEC. 2. DEFERRED PAYMENT OF TAX BY CERTAIN SMALL**
2 **BUSINESSES.**

3 (a) IN GENERAL.—Subchapter B of chapter 62 of the
4 Internal Revenue Code of 1986 (relating to extensions of
5 time for payment of tax) is amended by adding at the end
6 the following new section:

7 **“SEC. 6168. EXTENSION OF TIME FOR PAYMENT OF TAX FOR**
8 **CERTAIN SMALL BUSINESSES.**

9 “(a) IN GENERAL.—An eligible small business may
10 elect to pay the tax imposed by chapter 1 in 4 equal in-
11 stallments.

12 “(b) LIMITATION.—The maximum amount of tax
13 which may be paid in installments under this section for
14 any taxable year shall not exceed whichever of the fol-
15 lowing is the least:

16 “(1) The tax imposed by chapter 1 for the tax-
17 able year.

18 “(2) The amount contributed by the taxpayer
19 into a GROW Account during such year.

20 “(3) The excess of \$275,000 over the aggregate
21 amount of tax for which an election under this sec-
22 tion was made by the taxpayer (or any predecessor)
23 for all prior taxable years.

24 “(c) ELIGIBLE SMALL BUSINESS.—For purposes of
25 this section—

1 “(1) IN GENERAL.—The term ‘eligible small
2 business’ means, with respect to any taxable year,
3 any person if—

4 “(A) such person meets the active business
5 requirements of section 1202(e) throughout
6 such taxable year,

7 “(B) the taxpayer has gross receipts of
8 \$12,000,000 or less for the taxable year,

9 “(C) the gross receipts of the taxpayer for
10 such taxable year are at least 10 percent great-
11 er than the average annual gross receipts of the
12 taxpayer (or any predecessor) for the 2 prior
13 taxable years, and

14 “(D) the taxpayer uses an accrual method
15 of accounting.

16 “(2) CERTAIN RULES TO APPLY.—Rules similar
17 to the rules of paragraphs (2) and (3) of section
18 448(c) shall apply for purposes of this subsection.

19 “(d) DATE FOR PAYMENT OF INSTALLMENTS; IN-
20 TEREST.—

21 “(1) DATE FOR PAYMENT OF INSTALLMENTS.—

22 “(A) IN GENERAL.—If an election is made
23 under this section for any taxable year, the first
24 installment shall be paid on or before the due
25 date for such installment and each succeeding

1 installment shall be paid on or before the date
2 which is 1 year after the date prescribed by this
3 paragraph for payment of the preceding install-
4 ment.

5 “(B) DUE DATE FOR FIRST INSTALL-
6 MENT.—The due date for the first installment
7 for a taxable year shall be whichever of the fol-
8 lowing is the earliest:

9 “(i) The date selected by the tax-
10 payer.

11 “(ii) The date which is 2 years after
12 the date prescribed by section 6151(a) for
13 payment of the tax for such taxable year.

14 “(C) ADDITIONAL DEFERRAL WHERE EM-
15 PLOYMENT INCREASES.—

16 “(i) IN GENERAL.—Subparagraph
17 (B)(ii) shall be applied by substituting ‘3
18 years’ for ‘2 years’ in the case of an eligi-
19 ble small business which meets the employ-
20 ment increase requirement of clause (ii) for
21 the second taxable year following the tax-
22 able year for which the election is made.

23 “(ii) EMPLOYMENT INCREASE RE-
24 QUIREMENT.—The employment increase
25 requirement of this clause is met for such

1 second taxable year if the average daily
2 number of full-time employees of such
3 business for the last calendar quarter end-
4 ing in such taxable year is at least 10 per-
5 cent greater than such average number for
6 the last calendar quarter ending before the
7 date that the GROW Account of such busi-
8 ness is established. For purposes of this
9 clause, an employee shall be considered
10 full-time if such employee is employed at
11 least 35 hours per week.

12 “(iii) SALARY MAINTENANCE OF
13 CALLED-UP RESERVIST TREATED AS EM-
14 PLOYMENT INCREASE.—For purposes of
15 clause (ii), an eligible small business shall
16 be treated as having an additional full-time
17 employee for any period for each employee
18 who is a Ready Reserve/National Guard
19 employee of such business serving on quali-
20 fied active duty for such period if the com-
21 pensation paid or incurred by such busi-
22 ness to such employee for such period is
23 not less than the active duty wage differen-
24 tial of such employee for such period. For

1 the definition of terms used in this clause,
2 see subsection (g).

3 “(2) INTEREST.—For purposes of determining
4 interest under section 6601, if the time for payment
5 of an amount of tax has been extended under this
6 section, the due date prescribed for payment of such
7 tax which is to be paid in an installment under this
8 section shall be the due date for such installment.

9 “(e) SPECIAL RULES.—

10 “(1) APPLICATION OF LIMITATION TO PART-
11 NERS AND S CORPORATION SHAREHOLDERS.—

12 “(A) IN GENERAL.—In applying this sec-
13 tion to a partnership which is an eligible small
14 business—

15 “(i) the election under subsection (a)
16 shall be made by the partnership,

17 “(ii) the amount referred to in sub-
18 section (b)(1) shall be the sum of each
19 partner’s tax which is attributable to items
20 of the partnership and assuming the high-
21 est marginal rate under section 1, and

22 “(iii) the partnership shall be treated
23 as the taxpayer referred to in paragraphs
24 (2) and (3) of subsection (b).

1 “(B) OVERALL LIMITATION ALSO APPLIED
 2 AT PARTNER LEVEL.—In the case of a partner
 3 in a partnership, the limitation under sub-
 4 section (b)(3) shall be applied at the partner-
 5 ship and partner levels.

6 “(C) SIMILAR RULES FOR S CORPORA-
 7 TIONS.—Rules similar to the rules of subpara-
 8 graphs (A) and (B) shall apply to shareholders
 9 in an S corporation.

10 “(2) ACCELERATION OF PAYMENT IN CERTAIN
 11 CASES.—

12 “(A) IN GENERAL.—If—

13 “(i) the taxpayer ceases to meet the
 14 requirement of subsection (c)(1)(A), or

15 “(ii) there is an ownership change
 16 with respect to the taxpayer,

17 then the extension of time for payment of tax
 18 provided in subsection (a) shall cease to apply,
 19 and the unpaid portion of the tax payable in in-
 20 stallments shall be paid on or before the due
 21 date for filing the return of tax imposed by
 22 chapter 1 for the first taxable year following
 23 such cessation.

24 “(B) OWNERSHIP CHANGE.—For purposes
 25 of subparagraph, in the case of a corporation,

1 the term ‘ownership change’ has the meaning
2 given to such term by section 382. Rules simi-
3 lar to the rules applicable under the preceding
4 sentence shall apply to a partnership.

5 “(3) PRORATION OF DEFICIENCY TO INSTALL-
6 MENTS.—Rules similar to the rules of section
7 6166(e) shall apply for purposes of this section.

8 “(f) GROW ACCOUNT.—For purposes of this sec-
9 tion—

10 “(1) IN GENERAL.—The term ‘GROW Account’
11 means a trust created or organized in the United
12 States for the exclusive benefit of an eligible small
13 business, but only if the written governing instru-
14 ment creating the trust meets the following require-
15 ments:

16 “(A) No contribution will be accepted for
17 any taxable year in excess of the amount al-
18 lowed as a deferral under subsection (b) for
19 such year.

20 “(B) The trustee is a bank (as defined in
21 section 408(n)) or another person who dem-
22 onstrates to the satisfaction of the Secretary
23 that the manner in which such person will ad-
24 minister the trust will be consistent with the re-
25 quirements of this section.

1 “(C) The assets of the trust consist en-
2 tirely of cash or of obligations which have ade-
3 quate stated interest (as defined in section
4 1274(c)(2)) and which pay such interest not
5 less often than annually.

6 “(D) The assets of the trust will not be
7 commingled with other property except in a
8 common trust fund or common investment
9 fund.

10 “(E) Amounts in the trust may be used
11 only—

12 “(i) as security for a loan to the busi-
13 ness or for repayment of such loan, or

14 “(ii) to pay the installments under
15 this section.

16 “(2) ACCOUNT TAXED AS GRANTOR TRUST.—
17 The grantor of a GROW Account shall be treated
18 for purposes of this title as the owner of such Ac-
19 count and shall be subject to tax thereon in accord-
20 ance with subpart E of part I of subchapter J of
21 this chapter (relating to grantors and others treated
22 as substantial owners).

23 “(3) TIME WHEN PAYMENTS DEEMED MADE.—
24 For purposes of this section, a taxpayer shall be
25 deemed to have made a payment to a GROW Ac-

1 count on the last day of a taxable year if such pay-
 2 ment is made on account of such taxable year and
 3 is made within 3½ months after the close of such
 4 taxable year.

5 “(g) DEFINITIONS RELATING TO SALARY MAINTENANCE OF CALLED-UP RESERVISTS.—For purposes of
 6 subsection (d)(1)(C)(iii)—

8 “(1) READY RESERVE/NATIONAL GUARD EMPLOYEE.—
 9

10 “(A) IN GENERAL.—The term ‘Ready Reserve/National Guard employee’ means any em-
 11 ployee—
 12

13 “(i) who is a member of the Ready Reserve or of the National Guard, and
 14

15 “(ii) who was an employee of the taxpayer during the 1-year period ending on
 16 the day before the date that the employee
 17 begins qualified active duty.
 18

19 “(B) NATIONAL GUARD.—The term ‘National Guard’ has the meaning given such term
 20 by section 101(c)(1) of title 10, United States
 21 Code.
 22

23 “(C) READY RESERVE.—The term ‘Ready Reserve’ has the meaning given such term by
 24 section 10142 of title 10, United States Code.
 25

1 “(2) QUALIFIED ACTIVE DUTY.—The term
2 ‘qualified active duty’ means—

3 “(A) active duty under an order or call for
4 a period in excess of 90 days or for an indefi-
5 nite period, other than the training duty speci-
6 fied in—

7 “(i) section 10147 of title 10, United
8 States Code (relating to training require-
9 ments for the Ready Reserve), or

10 “(ii) section 502(a) of title 32, United
11 States Code (relating to required drills and
12 field exercises for the National Guard),

13 in connection with which an employee is entitled
14 to reemployment rights and other benefits or to
15 a leave of absence from employment under
16 chapter 43 of title 38, United States Code, and

17 “(B) hospitalization incident to such active
18 duty.

19 “(3) ACTIVE DUTY WAGE DIFFERENTIAL.—

20 “(A) IN GENERAL.—The active duty wage
21 differential of a Ready Reserve/National Guard
22 employee for any period of qualified active duty
23 is the amount equal to the product of—

24 “(i) the daily wage differential of such
25 employee for such period, multiplied by

1 “(ii) the number of days that such
2 employee is on qualified active duty during
3 such period.

4 “(B) DAILY WAGE DIFFERENTIAL.—For
5 purposes of subparagraph (A), the daily wage
6 differential of a Ready Reserve/National Guard
7 employee for any period is an amount equal to
8 the excess of—

9 “(i) such employee’s average daily em-
10 ployer-provided compensation for such pe-
11 riod, over

12 “(ii) such employee’s average daily
13 military pay for such period.

14 “(C) AVERAGE DAILY EMPLOYER-PRO-
15 VIDED COMPENSATION.—

16 “(i) IN GENERAL.—For purposes of
17 subparagraph (B), an employee’s average
18 daily employer-provided compensation for
19 any period is the average daily compensa-
20 tion paid by the employer to the employee
21 for the 1-year period ending on the day be-
22 fore the date that the employee begins
23 qualified active duty, adjusted for cost-of-
24 living and other increases generally appli-

1 cable to employees of the employer for
2 such period.

3 “(ii) EMPLOYER-PROVIDED COM-
4 PENSATION.—The term ‘compensation’
5 means any remuneration for employment,
6 whether in cash or in kind, which is allow-
7 able as a deduction under section
8 162(a)(1).

9 “(D) AVERAGE DAILY MILITARY PAY.—

10 “(i) IN GENERAL.—For purposes of
11 subparagraph (B), a Ready Reserve/Na-
12 tional Guard employee’s average daily mili-
13 tary pay is the average daily military pay
14 and allowances received by the employee on
15 account of the employee’s performance of
16 qualified active duty during the period.

17 “(ii) MILITARY PAY AND ALLOW-
18 ANCES.—For purposes of clause (i)—

19 “(I) MILITARY PAY.—The term
20 ‘military pay’ means pay (as defined
21 in section 101(21) of title 37, United
22 States Code).

23 “(II) ALLOWANCES.—The term
24 ‘allowances’ means the allowances
25 payable to a member of the Armed

1 Forces of the United States under
2 chapter 7 of such title.

3 “(h) REPORTS.—The Secretary may require such re-
4 porting as the Secretary determines to be appropriate to
5 carry out this section.

6 “(i) APPLICATION OF SECTION.—This section shall
7 apply to taxes imposed for taxable years beginning after
8 the date of the enactment of this section and before Janu-
9 ary 1, 2011.”.

10 (b) PRIORITY OF LENDER.—Subsection (b) of section
11 6323 of such Code is amended by adding at the end the
12 following new paragraph:

13 “(11) LOANS SECURED BY GROW ACCOUNTS.—
14 With respect to a GROW account (as defined in sec-
15 tion 6168(f)) with any bank (as defined in section
16 408(n)), to the extent of any loan made by such
17 bank without actual notice or knowledge of the exist-
18 ence of such lien, as against such bank, if such loan
19 is secured by such account.”.

20 (c) CLERICAL AMENDMENT.—The table of sections
21 for subchapter B of chapter 62 of such Code is amended
22 by adding at the end the following new item:

“Sec. 6168. Extension of time for payment of tax for certain small busi-
nesses.”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 the date of the enactment of this Act.

4 (e) STUDY BY GENERAL ACCOUNTING OFFICE.—

5 (1) STUDY.—In consultation with the Secretary
6 of the Treasury, the Comptroller General of the
7 United States shall undertake a study to evaluate
8 the applicability (including administrative aspects)
9 and impact of the GROW America’s Small Busi-
10 nesses Act of 2009, including how it affects the cap-
11 ital funding needs of businesses under the Act and
12 number of businesses benefitting.

13 (2) REPORT.—Not later than March 31, 2011,
14 the Comptroller General shall transmit to the Com-
15 mittee on Ways and Means of the House of Rep-
16 resentatives and the Committee on Finance of the
17 Senate a written report presenting the results of the
18 study conducted pursuant to this subsection, to-
19 gether with such recommendations for legislative or
20 administrative changes as the Comptroller General
21 determines are appropriate.

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